

Remarks

I. Objection to the Specification

The Examiner objects to the specification because the final page of the disclosure is page 38, while the claims begin on page 48. The Examiner wonders if ten pages are missing or if the claim pages should be numbered 39-40.

The present application is a continuation of an application filed in 1996, when 37 C.F.R. §1.823 required the sequence listing to be on a new page and to appear immediately prior to the claims. The present application, being a true copy of the parent application, has the sequence listing numbered as application pages 39-47, after the final page of the disclosure (page 38) and prior to the claims (page 48), in accord with 37 C.F.R. § 1.823 in effect in 1996. Thus, ten pages are not missing from the application. In light of this information, Applicant wonders if correction is required. Please advise.

II. Double-Patenting Rejection

Claims 1-5, 8, 9, and 20 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 and 8-11 of U.S. Patent No. 6,372,206 (hereinafter "the '206 patent"), issued April 16, 2002. This rejection is traversed, for the following reason.

According to M.P.E.P. § 804(II)(B)(1), whether a nonstatutory basis exists for a double patenting rejection, the first question to be asked is - does any claim in the application define an invention that is merely an obvious variation of an invention claimed in the patent?". Analysis of obviousness-type double patenting rejection is analogous to an analysis of obviousness under 35 U.S.C. § 103, except that the patent underlying the double patenting rejection is not considered prior art and the disclosure of the patent may not be used as prior art.

In the present application, the pending claims are directed to methods of treatment by administering bovine interferon-tau. The '206 patent is directed to methods of treatment by administering ovine interferon-tau. The present invention is not an obvious variation of

the '206 claims to ovine interferon-tau, since ovine and bovine are distinctly different ruminant species and the interferon-tau protein sequences from the two species are different.

Thus, Applicants respectfully submit that the pending claims are not an obvious variation of the claims in the '206 patent and withdrawal of the rejection is respectfully requested.

III. Conclusion

In view of the foregoing, the claims pending in the application comply with the requirements of 35 U.S.C. § 112 and patentably define over the applied art. A Notice of Allowance is, therefore, respectfully requested. If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to call the undersigned at (650) 838-4402.

Respectfully submitted,

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